

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 5185

SAMUEL CAIN, JR, A MINOR BY AND
THROUGH HIS GUARDIAN AD LITEM,
SAMUEL F. CAIN, and LEONA CAIN,
INDIVIDUALLY,

Plaintiffs,

vs.

CUMBERLAND COUNTY BOARD OF
EDUCATION,
Defendant.

SETTLEMENT AGREEMENT

AND RELEASE

FILED
JUL 14 P 3:24

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement")
is made and entered into this 10th day of July, 2017, by and between (among):

"CLAIMANTS" Samuel Cain, Jr., A Minor By and Through His Guardian Ad Litem
Samuel Cain, and Leona Cain, Individually

"DEFENDANTS" Cumberland County Board of Education

"INSURER" Sedgwick as TPA and Lloyd's of London

RECITALS

A. In April and May, 2015, Samuel Cain, Jr. was involved in an incident(s) in or near Fayetteville, Cumberland County, North Carolina. Claimants allege that the incident(s) and resulting physical injuries arose out of certain alleged negligent acts or omissions of the Defendant and Evelyn C. Spell, and have made claims seeking monetary damages on account of those injuries.

B. Insurer is the liability insurer of the Defendant, Cumberland County Board of Education, and as such, may be obligated to pay any claim made or judgment obtained against the Defendant and Evelyn C. Spell which is covered by its policy with the Defendant.

C. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the incident described in Recital A above, upon the terms and conditions set forth below.

AGREEMENT

The parties agree as follows:

1 Release and Discharge.

1.1 In consideration of the payment set forth in Section 2, Claimants hereby completely **RELEASE** and **FOREVER DISCHARGE** Defendant, Evelyn C. Spell, the Insurer, and all other persons, employees, agents, corporations or other entities, from any and all past, present, or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of service, expenses and compensation, of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Claimants now have, or which may hereafter accrue or otherwise be acquired on account of, or may in any way grow out of the incident described in Recital A above, including, without limitation, any and all known or unknown claims for bodily and personal injuries to Claimants, or for any future wrongful death claim of Claimants' representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendant.

1.2 This Release and Discharge shall also apply to Defendant's, Evelyn C. Spell's, and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns, and all other persons, firms, or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This Release, on the part of the Claimants, shall be a fully binding and complete settlement among the Claimants, the Defendant and the Insurer, and their heirs, assigns, and successors.

1.4 The Claimants acknowledge and agree that the Release and Discharge set forth above is a General Release. Claimants expressly waive and assume the risk of any and all claims for damages which exist as of this date, but which the Claimants do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Claimants' decision to enter into this Settlement Agreement. The Claimants further agree that the Claimants have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Claimants assume the risk that the facts or law may be other than Claimants believe. It is understood and agreed to by the parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendant, by whom liability is expressly denied.

2 Payments.

In consideration of the release set forth above, the Insurer, on behalf of the Defendant, agrees to pay to the individual(s) named below ("Payee(s)") the sums outlined in this Section 2 below:

2.1 Payments due at the time of Settlement as follows:

2.1.1 \$ 28,333.34 payable to the Cumberland County Clerk of Court to be held in trust for the benefit of said minor until he reaches the age of majority.

2.1.2 \$16,666.66 payable to the Law Offices of MacRae, Perry, MacRae & Whitley for valuable legal services rendered.

2.1.3 \$5,000.00 to Leona Cain.

All sums set forth herein constitute damages on account of physical injuries and sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3 Representation of Comprehension of Document.

In entering into this Settlement Agreement, Claimants represent that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Claimants.

4 Warranty of Capacity to Execute Agreement.

Claimants represent and warrant and no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of actions referred to in this Settlement Agreement, except as otherwise set forth herein; the Claimants have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Claimants have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

5 Governing Law.

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

6 Additional Documents.

All parties agree to cooperate fully and execute any and all supplementary documents and to take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

7 Entire Agreement and Successors in Interest.

This Settlement Agreement contains the entire agreement between the Claimants, the Defendants and the Insurer with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

8 Effectiveness.

This Settlement Agreement shall become effective immediately following execution by each of the parties.

This the 10th day of July, 2017.

CLAIMANT

Samuel Cain
Samuel Cain,
Individually and as *Guardian Ad Litem* for
Samuel Cain, Jr.

Leona Cain
Leona Cain, Plaintiff